Massachusetts Department of Revenue
Division of Local Services

Collections

Frequently Asked Questions About Collection of Municipal Taxes and Charges

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Workshop C

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Frequently Asked Questions: Collection Issues

Basic Responsibilities of the Collector

Q1. What are the collector's responsibilities in regard to sending out tax and excise bills?

A1. After receiving the tax and excise commitment list and the warrant signed by the assessors, the collector is responsible for sending bills for taxes and excises to the person or persons assessed. See Ch. 60, § 3.

The collector should prepare an affidavit of mailing for each property tax or excise mailing. See Ch. 60, § 3. The affidavit constitutes prima facie evidence that the bills were mailed on that date.

(updated 9/15/07)

Q2. Is the collector required to verify the address of each person to whom a tax and/or excise bill is sent?

A2. No. The assessors usually furnish address information for real and personal property tax bills. However, mailing the tax bills to the proper address is legally the collector's responsibility. The law provides that tax bills must be mailed "to the town where the assessed person resided on January first of the year in which the tax was assessed." See Ch. 60, § 3. If a municipality has accepted Section 57D of Chapter 59, the collector must include an affidavit of address to be signed and sworn to by the owner of record of the property with the preliminary, estimated or actual tax bill. Once the owner has submitted an affidavit, the collector should direct all mailings to the owner, or agent, at the listed address. See Ch. 59, § 57D.

For the motor vehicle excise, the Registry of Motor Vehicles provides address information for the excise bills. For the boat excise, owners of boats and ships are required to file returns with the assessors by August 1st. See Ch. 60B, § 2. Again, however, the collector is responsible for mailing the excise bills to the proper addresses. The law indicates that the bills should be sent to the residences or principal business addresses of the owners of the vehicles and vessels. See Ch. 60A, § 2; Ch. 60B, § 2.

(updated 9/15/07)

Q3. What information must the tax and excise bills contain?

A3. Ch. 60, § 3A provides that every tax bill "must be in a form approved by the Commissioner of Revenue." In the spring of every year, the Commissioner issues separate Informational Guideline Releases (IGRs) setting forth the requirements for preliminary bills, semi-annual bills and quarterly bills. Collectors should review the IGRs relevant to their communities to make certain that tax bills and demands conform to the requirements. In general, all tax bills must include: **(1)** the date as of which the tax was assessed; **(2)** the fiscal year to which the tax relates; **(3)** the tax rate; **(4)** identifying information for the parcel assessed; **(5)** the full and fair cash valuation of the property; **(6)** the tax due; **(7)** the last day for the assessed owner to apply for an abatement; and **(8)** the last day on which payment must be made without interest being due. See Ch. 60, §§ 3, 3A.

There also are IGRs (No. 04-210 and No. 04-211) that set forth the requirements for the content of motor vehicle and boat excise bills. In general, all motor vehicle excise bills must include: **(1)** the tax date and excise year; **(2)** taxpayer's name, address, and license number; **(3)** vehicle description; **(4)** value of the vehicle; **(5)** excise rate; **(6)** amount due; **(7)** due date; **(8)** payment instructions; and **(9)** billing and appeal rights. See Ch. 60A, § 2. In general, all boat excise bills must include: **(1)** the excise year; **(2)** taxpayer's name and address; **(3)** vessel description; **(4)** value of the vessel; **(5)** excise rate; **(6)** amount due; **(7)** due date; **(8)** payment instructions; and **(9)** billing and appeal rights. See IGR No. 04-211.

(updated 9/15/07)

Q4. Can inserts be included with the bills?

A4. With the approval of the board of selectmen or the mayor, the collector may include nonpolitical municipal information material in the envelope in which the property tax bills are to be mailed so long as such inserts do not cause an increase in the postage required for mailing the tax bill. See Ch. 60, § 3A.

(updated 9/15/07)

Q5. What happens if the taxpayer never receives the tax or excise bill?

A5. Failure to receive a tax or excise bill does not affect the validity of the tax or excise nor the proceedings for collection. See Ch. 60, § 3; Ch. 60A, § 2.

(updated 9/15/07)

Q6. What is the collector required to do with payments received?

A6. The collector must record the date of payment and pay over to the treasurer all money received for taxes and excises.

(updated 9/15/07)

Q7. Can a collector accept payments prior to the issuance of the tax bills?

A7. Yes, if the collector has received the tax commitment list and the warrant signed by the assessors. If not, the assessors can authorize the collector to accept voluntary tax payments, prior to the issuance of the tax bills, by means of a special warrant. See Ch. 60, §§ 3, 19; State Tax Form 64B.

(updated 9/15/07)

Q8. How does the collector determine the priority of the application of payments?

A8. Ch. 60, § 3E requires that payments be applied first to interest and costs, and then to the obligation. If a taxpayer tenders a payment directed toward a particular tax or bill, the collector must follow the taxpayer's direction and apply it to that obligation. However, the taxpayer cannot direct the collector to apply it to the tax first.

(updated 9/15/07)

Q9. **How can the collector enforce payment of tax and excise bills by taxpayers?**

A9. The statutes provide a number of procedures to encourage timely payment and enforce payment of overdue taxes and excises including, but not limited to: **(1)** accepting a partial payment[1] (see Ch. 60, § 22); **(2)** installment payments (see Ch. 60, § 62) and payment agreements (see Ch. 60, § 62A); **(3)** sending a demand for payment[2] (see Ch. 60, § 16); **(4)** performing a tax taking for real property (see Ch. 60, § 37-54); **(5)** bringing a civil suit (see Ch. 60, § 35); **(6)** placing a registrant's license and registration in non-renewal status due to delinquent motor vehicle excises[3] (see Ch. 60A, § 2A); **(7)** making a setoff of amounts due the taxpayer from the town (see Ch. 60, § 93); **(8)** denying an application for, or revoking or suspending a local license or permit pursuant to a local bylaw or ordinance[4] (see Ch. 40, § 57); and **(9)** hiring a collection services agency[5] (see Ch. 60, § 2B; Ch. 60A, § 3; Ch. 60B, § 5).

Q10. **What should the collector do if he or she has determined that a tax or excise is uncollectible?**

A10. If the tax is on real property and the collector is satisfied that it is uncollectible, he or she may request that the assessors apply for authority from the Commissioner of Revenue under the provisions of Ch. 58, § 8 to abate the unpaid tax.

If the collector is satisfied that a tax on personal property or a motor vehicle excise is uncollectible because of death, absence, poverty, insolvency or other inability of the person assessed to pay, the collector should notify the assessors that the tax cannot be paid. The assessors must then decide within 30 days whether to abate the personal property tax. See Ch. 59, § 71; Ch. 60A, § 7. If a personal property tax is uncollectible for some other reason, the collector can request the assessors to apply for authority from the Commissioner of Revenue under the provisions of Ch. 58, § 8 to abate the unpaid tax.

(updated 9/15/07)

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[1] This authorization is not a taxpayer's right under Chapter 60A as it is under Chapter 60. Therefore, a collector may refuse to accept a partial payment for the motor vehicle excise.

[2] A demand is a prerequisite to a tax taking, issuance of a warrant or "marking" of a license and registration for non-renewal.

[3] Pursuant to RMV guidelines, a license and/or registration may not be placed in non-renewal status later than 2 years after the bill was issued.

[4] This method applies only in cities and towns which have accepted Ch. 40, § 57 and only to taxpayers on a list of delinquents at least one year overdue in payment of municipal taxes and/or charges.

[5] This method cannot be used for real property taxes.

Q11. Who is responsible for preparing municipal lien certificates?

A11. When a request is made for a municipal lien certificate, the collector is responsible for preparing it, listing all taxes and other assessments, including water rates and other charges which, at the time, constitute unrecorded liens on a parcel of real estate. See Ch. 60, § 23. In cities and towns with a population of more than 5,000 inhabitants, the collector must provide a completed certificate to an applicant within 10 business days of a request. In a city or town with 5,000 inhabitants or less, the collector has 20 days.

(updated 9/15/07)

Property Taxes and Tax Liens

Q12. What is the relation between the property tax and the tax lien?

A12. The assessors' commitment of a real estate or personal property tax creates the liability for the tax, the obligation of the person assessed to the municipality. The property tax lien is a collection remedy for municipal taxes on real estate. It arises automatically on the assessment date, January 1st, and is generally superior to other interests in the property, such as mortgages and other liens, and to the rights of co-owners who aren't assessed and heirs, even if those other interests were created before the tax lien arose.

For collection purposes, property tax liens secure not only the taxes, but also other municipal charges such as water and sewer bills that the assessors have committed along with the tax, and the interest and collection charges incurred under Chapter 60. In towns that have tax-levying districts, such as water or fire districts, tax takings or sales will perfect liens for district as well as town taxes and charges.

(updated 9/15/07)

Q13. How long does the automatic lien stay in effect?

A13. If the lien is perfected by a tax taking or tax sale, it becomes a tax title and will be valid for an unlimited period. However, a lien can be lost at any time before it becomes a tax title by the issuance of an erroneous lien certificate for the parcel that does not list the tax or charges that the lien secures. In addition, after five years from the assessment date for the tax, the lien will be lost if there is a recorded alienation (conveyance) of the property. For example, the assessment date for the 2008 fiscal year's tax is January 1, 2007. Therefore, if the property is sold and no tax taking is made, the lien will expire on December 31, 2011. Note that both the recorded alienation and the lapse of five years must occur to defeat the lien. An unperfected lien may still be good after five years from the assessment date if there has been no recorded alienation.

(updated 9/15/07)

Q14. Is there a statute of limitations for property tax bills?

A14. No statute sets a time limit on the validity of the property tax itself. However, certain of the collection remedies available to enforce the tax have limitations. For example, as noted in **A13.** above, the automatic lien may expire five years after the assessment date for the taxes if, before then, a conveyance of the real property is made and recorded. In addition, a suit in contract under Ch. 60, § 35 must be commenced within six years in order to be effective. By contrast, collection by the revocation, denial or suspension of license or permits under Ch. 40, § 57, or by set-off under G.L. Ch. 60, § 93 has no time limitation, However, any set-off against the wages of an employee must be exercised in harmony with all other provisions of law, both state and federal, which relate to the garnishment of wages.

(updated 9/15/07)

Demand Notices

Q15. Do all collection procedures require an antecedent mailing of a demand notice?

A15. No. The mailing of a demand is a prerequisite to a tax collector's use of certain statutory collection procedures. For example, a collector must first send a demand in order to perform a tax taking under Ch. 60, § 37, to seize and sell goods under Ch. 60, § 24 or to imprison under Ch. 60, § 29, or to "mark" a license or registration for non-renewal under Ch. 60A, § 2A. However, a tax collector, pursuant to Ch. 60, § 35, may sue to collect a tax without first mailing a demand. See City of Boston v. Du Wors, 340 Mass. 402 (1960). In addition, a tax collector may make a setoff of amounts due the taxpayer from the town under Ch. 60, § 93 or add boat excise penalties under Ch. 60B, §4 without first mailing a demand.

(updated 9/15/07)

Q16. When should the demand notice be sent?

A16. The statute does not provide a time period that must elapse before the sending of a demand notice. See Ch. 60, § 16. However, we do not believe that a demand should be sent until after the final date for the second half of the tax bill.

(updated 9/15/07)

Q17. Where must the collector mail the demand notice?

A17. The collector should mail the demand notice to the person assessed the tax at the last and usual place of business or abode, or to the address best known to the collector. See Ch. 60, § 16. The collector may also send a copy of the demand to the current owner, if known.

A demand for real estate taxes is a prerequisite to a valid tax taking. It is clear that mailing a demand for real estate taxes only to the assessed owner is sufficient for a valid tax taking. See City of Boston v. Lynch, 304 Mass. 272 at 276 (1939)("no demand on any person other than ... the person assessed as owner, was necessary."). No court decision has clarified whether mailing only to the current owner is sufficient for a valid tax taking.

(updated 9/15/07)

Q18. What happens if the person assessed does not receive the demand?

A18. Failure to receive the demand does not invalidate the proceedings for collection so long as the demand was properly mailed to the correct party. See Ch. 60, § 16.

(updated 9/15/07)

Q19. What happens if the tax is not paid after the demand is sent?

A19. For real property, if the tax remains unpaid for 14 days after a demand has been sent, the collector may initiate the tax taking process on the parcel of real property. For personal property[6], if a demand is not paid within 14 days, the collector may issue a warrant to collect and a warrant to distrain to the deputy collector. Likewise, for the

[6] The mailing of a demand is not a prerequisite to a tax collector's issuance of a warrant to collect personal property taxes as it is with real property taxes and motor vehicle excises.

motor vehicle and boat excise, if a demand is not paid within 14 days, the collector may issue a warrant to collect to the deputy collector.

(updated 9/15/07)

Losing Tax Liens

Q20. How can a municipality lose its tax lien?

A20. A lien can be lost at any time before it becomes a tax title by the issuance of an erroneous lien certificate for the parcel that does not list the tax or charges that the lien secures. In addition, after five years from the assessment date for the tax, the lien will be lost if there is a recorded alienation (conveyance) of the property. (See also **A13.** above.)

(updated 9/15/07)

Q21. How does a collector protect against the possibility of a municipality losing its lien?

A21. A collector should protect against the possibility of the municipality's losing its automatic lien by performing tax takings within the time period set forth in Ch. 60, § 37 (i.e., three years and six months from the end of the fiscal year for which the taxes were assessed).

When the standard tax taking procedure cannot be pursued, the collector must preserve the lien by filing a continuation of lien certificate under Ch. 60, § 37A.

(updated 9/15/07)

Collecting Taxes on Real Estate Where the Lien has been Lost

Q22. If a lien on a parcel is lost, is the tax uncollectible?

A22. Even if a lien is lost, the underlying tax is still due, and may be enforced by any of the other collection remedies available to a collector. These include a suit against the assessed owner, a withholding and set-off of any money owed by the city or town to the assessed owner, and – in municipalities that have accepted Ch. 40, § 57 and adopted an implementing ordinance or bylaw – the denial, suspension or revocation of municipal licenses and permits.

Because the lien is such an effective collection mechanism, it is obviously best not to lose it. The risk of losing tax liens can be reduced by perfecting them promptly. Once a lien has been properly perfected, it is nearly impossible for it to be lost; erroneous lien certificates and transfers of the property will have no effect on the lien's status or enforceability.

(updated 9/15/07)

Q23. If a collector issues a lien certificate for a parcel that fails to show outstanding taxes on the parcel, and the certificate is recorded promptly, can the collector record a corrected lien certificate and reinstate the lien?

A23. A municipal lien certificate cannot create a lien, or reinstate a lien that has been lost. If unpaid taxes are listed on a lien certificate after the lien for those taxes has been lost, whether through a lapse of time and a recorded alienation, or through the omission of such taxes from a previous recorded lien certificate, the inclusion of those taxes on the new lien certificate will not revive the lost lien.

(updated 9/15/07)

Perfecting Tax Liens – Tax Takings and Tax Sales

Q24. What steps must a collector take to perfect a tax lien?

A24. Municipal collectors can perfect tax liens through either of two methods: a tax taking or a tax sale. Both methods require that a demand be issued for the delinquent taxes at least fourteen days before any notice of sale or taking. See Ch. 60, § 37.

Tax takings, which are both simpler and more common than tax sales, are the preferred method of perfecting liens. If the taxes remain unpaid after the demand, the collector must wait at least fourteen days before giving notice of his intent to take. The collector may give notice by posting it in two public places in town and by having it printed in a newspaper published in the town, or, if there is no paper published in the town, in a newspaper published in the county. An alternative to notice by publication, service of notice in the same way subpoenas are served, is seldom used because of its cost and uncertainty.

The notice of intent to take must contain a description of the property to be taken, the amount of taxes and other charges for which the property will be taken, the names of all owners known to the collector, and the time and place of the taking. The date of the taking must be at least fourteen days after the notice of intent to take. Errors and irregularities in the assessment or proceedings for collection will not invalidate a tax title unless they are substantial or misleading.

After the taking, the collector must record or register an instrument of taking at the registry of deeds within sixty days of the date of taking; otherwise, the taking will not be effective. The instrument must include a description of the property, the name of the assessed owner or owners, and the taxes and charges for which the property was taken. If the title reference that the collector has for the property is a book and page number, the instrument should be recorded; if it is a certificate of title number, the instrument should be registered with the land court office in the registry of deeds.

(updated 9/15/07)

Abatements of Taxes/Excises

Q25. Can the collector abate a tax or excise if he or she has determined that it is uncollectible?

A25. No. Only the assessors have the statutory right to grant abatements. See Ch. 59, §§ 59, 71; Ch. 58, §§ 8, 8C (with the permission of Commissioner of Revenue); Ch. 60A, §§ 7, 8.

(updated 9/15/07)

Q26. Can an abatement under Ch. 59, § 71 or Ch. 60A, § 7 be rescinded if a tax or excise which had been deemed uncollectible becomes collectible?

A26. Ch. 59, § 71 and Ch. 60A, § 7 authorize the abatement of a tax on personal property or a motor vehicle excise which is uncollectible "by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay." The chief purpose of these statutes is to afford a means for tax collectors to remove uncollectibles from their receivables. We believe that an abatement under either statute, or under Ch. 58, § 8, may be rescinded if a tax or excise which had been deemed "uncollectible" becomes collectible. The municipality may thereafter pursue all available collection remedies.

(updated 9/15/07)

Q27. Can a collector make a tax taking if the taxpayer has filed an appeal of the assessors' denial of his/her/its abatement application?

A27. Yes. The filing of an abatement application, or an appeal of the assessors' denial of the application, does not stay proceedings for the collection of the tax, although a foreclosure of a tax title would be impossible because the amount needed to redeem the tax title would not be known until the abatement case had been decided. In some cases, especially if there is a further appeal after a decision by the Appellate Tax Board, it may be necessary to make a taking in order to protect the municipality's lien.

(updated 9/15/07)

Q28. How should a municipality account for an abatement of a tax that has been certified to a tax title account in accordance with Ch. 60, § 61?

A28. The collector should give the treasurer and the accountant an amended certification of the amount of the tax, together with an interest calculation on the unpaid balance of the tax as abated up to the date of the original certification. A copy of the abatement certificate should be attached to the amended certification. The abated tax is charged to overlay; the reduction in interest due is reflected by an adjustment to the tax title receivable account.

If the abatement equals or exceeds the amount of the tax certified (net of interest), then the amended certification should be zero. The treasurer should prepare and record an instrument of redemption.

(updated 9/15/07)

Erroneous Mailings

Q29. What effect does an error in mailing the demand have?

A29. An error in mailing the demand will invalidate a tax taking *unless* the collector can show that the taxpayer actually received the demand. See Ch. 60, § 37; Hilde v. Dixon, 16 Mass. App. Ct. 981 (1983).

(updated 9/15/07)

Q30. What effect does an erroneous mailing of a tax bill have on a taxpayer's rights?

A30. A valid commitment of a tax creates a liability to the municipality of the person assessed. The failure to send a tax bill does not affect the validity of the tax obligation or the proceedings to collect it. See Ch. 60, § 3. The law provides only that the tax bill must be mailed "to the **town where the assessed person resided on January first** of the year in which the tax was assessed."

For residential properties, it is reasonable for the collector to assume that the owner resides at the parcel in the absence of information to the contrary. However, if the homeowner has notified the collector **in writing** that he or she lives at another address, and has specifically requested that all tax bills be directed to that alternate address (or has filed an affidavit in a city or town that has accepted Ch. 59, § 57D), we think the bill should be mailed to that address in order to be considered properly issued under the statute.

Although the validity and enforceability of the bill are not affected by a failure to make a proper mailing, a taxpayer's obligation to pay interest, and the deadline for a valid abatement obligation, are calculated with reference to the date of a proper mailing of the tax bill. Therefore, a collector who can confirm that a tax bill was mailed to an erroneous address or was otherwise not properly mailed, should mail another copy of the bill to the correct address, compute interest with respect to the date of mailing to the correct address, notify the assessors in writing of the date of mailing of the substitute bill, and place a note in the billing file to explain the later mailing date for the bill in question.

(updated 9/15/07)

Notice Requirements

Q31. Should assessed owners' names be included in a published notice of intent to take a parcel if they have sold the property before it is advertised for taking, or even before the taxes were assessed?

A31. Yes. An assessed owner is personally liable for the tax (see Ch. 60, § 35) even if he or she has conveyed the property before the tax is assessed. Although real estate taxes are ordinarily enforced against the property through the lien, a collector has the option of enforcing the personal liability for them by suit against the assessed owner. If the lien is lost, collection by suit against the assessed owner may be the only way to collect the taxes.

Ch. 60, § 40 requires that a published notice of intent to sell or take real estate must include all owners known to the collector. While the language of § 40 itself does not define the word *owners*, Ch. 60, § 54 requires that the instrument of taking be in the name of the assessed owner, and Ch. 60, § 56 provides that a taking in the name of *any* assessed owner will create a lien valid against all owners of the property. A demand for real estate taxes, which is a prerequisite to a valid tax taking, may be made only to an assessed owner. City of Boston v. Lynch, 304 Mass. 272 at 276 (1939)("No demand on any person other than ... the person assessed as owner, was necessary."); see Ch. 60, § 16. Against this statutory background, the word *owners* in § 40 is best read in an inclusive sense, to refer to assessed owners as well as owners at the time of taking. If the legislature had meant *owners* in § 40 not to include assessed owners, the natural way to express such an intention would have been to use a term such as *then current owners*.

In addition to the particular provisions of the statutory scheme, there are practical reasons why it makes sense to include assessed owners in published notices of intended tax takings. In some cases mortgagees or other parties with interests in a parcel may not have been informed of a conveyance, and may therefore be less likely to realize that a tax taking will affect their interests if only the subsequent owners' names appear in a published notice. Moreover, collectors are not specialists in the law of real estate transactions, and may misconstrue the effect of recorded transactions and conveyances. Deeds reserving life estates, or deeds to a trust whose trust name is different from the assessed owner's name but whose trustee is the assessed owner, might mislead a collector into supposing that the assessed ownership has changed when it has not. In such cases, takings made following publication of notices that list only the name of the remaindermen, or only the trust name, might well prove invalid.

There are steps collectors can take within the limitations of the statutory framework that may reduce the number of assessed owners who are caught unawares by the publication of their names in an advertisement of an intent to take property that they no longer own. If collectors know of conveyances when they are preparing bills or other notices relating to real estate taxes, they can take steps to make all parties involved in the conveyance aware of the payment status of taxes. A collector can send tax bills to subsequent owners. Bills and demands to assessed owners who are not the current owners can include explanatory material to alert them about their obligations with respect to the unpaid taxes, and about the possibility of being named in a published notice of intent to take.

(updated 9/15/07)

Q32. What effect does the failure to observe the notice requirements have on the validity of a tax title?

A32. Substantial or misleading errors in the performance of the taking can invalidate the tax taking. See Ch. 60, § 37; Bartevian v. Cullen, 369 Mass. 819 (1976)(failure of tax collector to send demand to proper address was substantial error); City of Quincy v. Wilson, 305 Mass. 229 (1940)(inclusion of tax, for which land could not be taken, made the statement of taxes due excessive and the taking invalid).

(updated 9/15/07)

Fees

Q33. Can a collector add a service, administrative or legal charge to a tax bill?

A33. No, except for "legal fees for search of title." See Ch. 60, § 15(3)). (See also **A35.** below.) The fees that can be added to tax bills are set forth in Ch. 60, § 15.

(updated 9/15/07)

Instruments of Taking

Q34. What date should be on the instrument of taking?

A34. The date on the instrument of taking should be the date of the actual taking, not the date on which the instrument was prepared.

(updated 9/15/07)

Title Search

Q35. Must a collector have an attorney at law perform a title search in connection with a tax taking or sale in order to be able to add the cost of the title search to the tax?

A35. No. Although Ch. 60, § 15(3) refers to "legal fees for search of title" we do not think the language requires that the search be conducted by a lawyer.

(updated 9/15/07)

Tax Titles

Q36. What should the collector do after recording the instrument of taking?

A36. After completing a taking by recording the instrument of taking, the collector should prepare a list of recorded takings to be set up as tax title accounts, giving one to the treasurer, one to the accounting officer, and keeping one for his or her own records. The list of recorded takings contains the names of the delinquent taxpayers, a brief description of the property included, the years, and taxes, interest and costs for which the property was taken at the time of the taking. From the list, the treasurer sets up a tax title account sheet for each parcel of real estate included in the list.

In each subsequent year, for all parcels of real estate taken into tax title and not redeemed, the collector must certify to the tax title account all unpaid taxes and assessments, together with any costs and interest accrued.

(updated 9/15/07)

Q37. After a tax taking, who is responsible for the tax title and foreclosure?

A37. Perfecting the lien through a tax taking creates a tax title, which becomes the treasurer's responsibility. The treasurer must issue an instrument of redemption if the tax title is redeemed and the liability is paid off. If the tax title is not redeemed and the liability is not paid off, the treasurer is responsible for enforcing the tax title through foreclosure.

In cases of parcels with respect to which the commissioner of revenue has given the treasurer an affidavit of low value, currently (calendar year 2007) for parcels worth no more than $17,870, taxes may be foreclosed through a sale by the treasurer. Taxes on parcels worth more than the threshold for low value foreclosure can be foreclosed only through a petition to foreclose in the land court. Except in cases of abandoned property or land of low value, a treasurer must wait six months after the taking before beginning proceedings to foreclose the tax title. A petition to foreclose a tax title must be filed in the Land Court, which appoints a title examiner to determine the identity of all interested parties in the property. Those parties are notified of the proceedings, and given an opportunity to redeem the property or otherwise respond to the petition. Many treasurers and their office staff handle tax title foreclosures without the assistance of an attorney in cases where no interested party contests the foreclosure.

If the tax title is not redeemed or successfully challenged, the land court will issue a decree foreclosing the right to redeem the property. A party with an interest in the property who received notice of the foreclosure can bring a petition to vacate the foreclosure decree only within one year. If the municipality does not oppose the petition to vacate, it should at least request the land court to require that the taxpayer pay the additional taxes that would have been assessed for subsequent years, together with interest and any betterments or special assessments that had not been added to the tax title at the time of foreclosure.

(updated 9/15/07)

Q38. When should subsequent fiscal years' taxes be certified to a tax title account? Should estimated or preliminary taxes be certified to a tax title account?

A38. Ch. 60, § 61 establishes a certification date of no later than September first of the year following the assessment of the taxes being certified. The case law under § 61 makes it clear that collectors may certify taxes after that date. City of Boston v. Barry, 315 Mass 572. The phrase "taxes assessed subsequently" for the purposes of the certification means the taxes established by the actual assessment and commitment, not estimated or preliminary taxes, since it is the actual commitment that fixes taxpayer liability for the year. The commitment of an estimated or preliminary tax is superseded by the commitment of the actual tax for the fiscal year, which could be lower than the amount of the preliminary or estimated commitment.

The certification should not be made until after the due date for the last installment payment for the fiscal year. While the statute does not expressly preclude certification sooner, we think the statutory scheme is intended simply to establish a deadline for such certification, and not to deprive a taxpayer of the right to pay the current year's tax without incurring interest.

(updated 9/15/07)

Invalid Tax Titles

Q39. What should collectors and treasurers do when they discover that a tax title is invalid?

A39. A treasurer who discovers that a tax title is invalid should notify the collector of the reason for the invalidity. The collector should disclaim the tax title under Ch. 60, § 84.

If the reason for the invalidity of the tax title is an error in the proceedings for the tax taking or sale, such as a failure to record an instrument of taking within 60 days of the taking, or a failure to mail a demand to a proper address, then the collector can make and record a new taking within 90 days and the municipality's lien will be safe. See Ch. 60, § 37.

If the tax title is invalid because of an error in the assessment, such as an assessment to someone who is not the owner, the assessors should reassess the tax under Ch. 59, § 77. The lien will be good for the same period it would have been good if the assessors had assessed the property correctly in the first place. If the lien is still good, the collector should issue a demand and make a new taking.

(updated 9/15/07)

Taxes Not Certified to a Tax Title Before Foreclosure

Q40. How should a community account for taxes after foreclosure of a tax title if the taxes had not been certified to the tax title before the foreclosure was completed?

A40. Tax title property that is foreclosed upon becomes tax possession property of the municipality. The municipality's lien for those charges is merged with its ownership interest. Taxes that remain on the collector's books after foreclosure because they were not certified to the tax title account before land court issued a foreclosure decree or the treasurer made a land of low value sale under Ch. 60, §79 should be certified to the tax possession account rather than abated, provided that the city or town stills holds the property as a tax possession, i.e., has not sold the property, or voted to dedicate it to a municipal use.

The collector should send a list of the amount of such taxes, charges and interest to be added to the tax possession account to the treasurer and to the accountant or auditor.

(updated 9/15/07)

Redemption After Foreclosure

Q41. When a tax title foreclosure decree is vacated, can a city or town recover taxes that were never assessed on property for the years it was in tax possession?

A41. Assessors cannot assess taxes for prior years when the property was a tax possession of the city, because the deadline under Ch. 59, § 75 for omitted assessments is June 20th of the fiscal year to which the tax relates, or 90 days after the mailing of the actual tax bills, whichever is later.

However, when property is redeemed, whether before or after foreclosure, the land court can impose terms of redemption other than the payment of the taxes, interest and charges. See Ch. 60, § 68. A municipal treasurer petitioning the land court to vacate a decree (see Ch. 60, § 69A) should, as a prerequisite to filing the petition to vacate, insist upon the payment of:

- additional interest that would have accrued on the tax title since foreclosure;
- taxes that would have been assessed since foreclosure, and interest on such amounts; and
- any other costs the town has incurred on account of the property since foreclosure, such as costs to secure or repair the property, costs for water and sewer where the owner has continued to occupy the property after the foreclosure decree.

If the property owner or other interested party seeks to vacate the decree, the town should ask the land court to make payment of such additional amounts part of the terms of redemption.

(updated 9/15/07)

Division of Parcels in Tax Title

Q42. What should a collector do when property that is subject to a tax title held by the municipality is divided without redeeming the tax title?

A42. There is some uncertainty how best to proceed, because Ch. 60 expressly authorizes additional tax takings on property on which the city or town holds a tax title only where parcels in tax title are merged. See Ch. 60, § 61A. However, without a new taking, there seems to be no way for the collector to perfect the municipality's lien for taxes assessed after the division of the parcel. Such subsequent taxes would be assessed to the subparcels of the original parcel, and would often be owed by different owners. Since the assessment of the property in subsequent years as separate parcels creates distinct liens on the subparcels, the collector cannot certify the unpaid taxes on the subparcels for subsequent years to the preexisting tax title for the original parcel. A collector should probably make new tax takings on two lots that are already subject to a tax title as part of a single parcel of vacant land. The new titles should be cross referenced to the existing title in the notice and instrument of taking and the tax title account records. See Ch. 60, § 61A.

Because of the uncertainty about the takings for the subsequent years' taxes on the subparcels, the treasurer should move promptly to foreclose the original tax titles in such cases. This will frequently induce the owners of the subparcels either to redeem the original tax title in whole or in part. See Ch. 60, § 76A.

(updated 9/15/07)

Effect of Municipal Lien Certificate on Subsequent Revised, Omitted or Supplemental Assessments

Q43. If a municipal lien certificate is issued showing no taxes due for a fiscal year, and the assessors later commit a revised or omitted assessment, does the recording of the municipal lien certificate eliminate the lien for the revised, omitted or supplemental assessment?

A43. No. Some collectors add a statement to lien certificates issued before the regular commitment, noting that taxes for the current year are unascertainable or not yet ascertained, but while such language may be helpful to prospective lenders or purchasers, it is not necessary to preserve a lien for taxes committed later, either as part of the regular commitment or as an omitted, revised or supplemental assessment under Ch. 59, § 75, § 76, or § 2D respectively.

The idea that omission of taxes not yet committed from a lien certificate extinguishes the lien for those taxes is inconsistent with the statutory purpose of municipal lien certificates. That purpose is to convey information about taxes and charges '... which **at the time** constitute liens on the parcel of real estate ...' (Ch. 60, § 23, emphasis added), and to protect persons relying on the certificates against misstatements of the balance due of such taxes and charges. If a statement that taxes were unascertainable were necessary to preserve the lien for subsequently assessed taxes, every lien certificate issued before June 21st should contain a statement that the current fiscal year's taxes are unascertainable, because of the possibility of a revised assessment (Ch. 59, § 76); all lien certificates in communities that had not rejected Ch. 59, § 2D would have to contain a similar statement, because of the possibility of a supplemental assessment. Certificates issued between January 1st and July 1st should also, on that theory, contain a statement that the following fiscal year's taxes are unascertainable, because the lien for the following fiscal year's taxes will have already arisen (Ch.60, § 37).

Such statements would convey no information whatsoever about the particular parcel for which the certificate was requested; they would merely recapitulate the provisions of the General Laws. Their inclusion on lien certificates would therefore be pointless as a means of furthering the statutory purpose of informing taxpayers about the charges currently due that are secured by a lien on the particular parcel for which the lien certificate is issued. Indeed, such statements would be worse than pointless; they would be a source of confusion.

(updated 9/15/07)

Partial Payments

Q44. May a collector apply a check from a delinquent taxpayer toward partial payment of a bill?

A44. The collector must accept a partial payment of the real estate tax up to the date that an advertisement is prepared for the sale or taking of that real estate so long as the amount tendered is at least ten dollars and not less than ten percent of the total tax. See Ch. 60, § 22; Ch. 60, § 40.

The collector must accept a partial payment of the personal property tax at any time up to the date that a warrant or other process is issued for the enforcement and collection of the tax so long as the payment is at least ten dollars and not less than ten percent of the total tax. See Ch. 60, § 22.

The collector is **not** required to accept a partial payment of the motor vehicle excise.

Q45. How should collectors and treasurers apply partial payments?

A45. The collector must apply the payment first to interest and costs, and then to the obligation. See Ch. 60, § 3E. Under the Molesworth case (Commissioner of Revenue v. Molesworth, 408 Mass. 580 (1990), the court had held the taxpayer could specify the application of a partial payment to the principal amount of a given obligation rather than to interest and costs, because there was no statute that required another application. This matters because interest on municipals bills and charges is generally simple rather than compound interest, so that paying off the principal amount of underlying obligation rather than interest and costs reduces the amount of interest that will accrue in the future. As a result of Ch. 60, § 3E, enacted as part of the 2003 Municipal Relief Act, (see Section III of IGR 03-210) the taxpayer can no longer direct that a partial payment be applied to the tax first. However, a taxpayer can still tender a payment directed toward a particular tax or bill, and the collector must apply the payment to that obligation. (See also **A8.** above.)

(updated 9/15/07)

Bad Checks

Q46. How should collectors and treasurers deal with bad checks?

A46. Collectors and treasurers who receive dishonored checks back from banks must reverse the payment and reestablish the receivable as an unpaid balance. They also can: **(1)** attempt to redeposit the check by calling the bank to verify the presence of sufficient funds and **(2)** pursue collection through the district court and impose a penalty of 1% of the amount of the check or $25 for a check for less than $2,500. See Ch. 60, § 57A (for collectors); Ch. 44, § 69 (for treasurers).

Collectors and treasurers should not issue lien certificates or instruments of redemption reflecting payments based upon checks that have not yet cleared.

(updated 9/15/07)

Waiver of Interest

Q47. When may collectors and treasurers waive interest and charges on tax bills or tax titles?

A47. Collectors may waive interest and charges whenever the total amount of interest and charges due is $15 or less. See Ch. 60, § 15. Note that collectors may not waive **up to** $15 dollars of interest and charges; if the total of interest and charges exceeds $15, the collector has no power to waive any amount. This power exists for the administrative convenience of collectors, so they will not have to seek to enforce the collection of small amounts that may be due when payments arrive a few days after the due date. Taxpayers have no right to such a waiver of interest and charges.

Treasurers may waive interest in a tax title only as authorized by an ordinance or bylaw adopted under Ch. 60, § 62A. See part I.A. and I.B. of IGR 05-208. If interest has been miscalculated, treasurers may correct the miscalculation under Ch. 60, § 62.

(updated 9/15/07)

Misapplied Tax Payments

Q48. How can a collector correct an error in the crediting of a tax payment?

A48. If the collector's office made the error, the payment should be re-credited to the correct account as soon as the error is discovered.

If the taxpayer or another interested party, such as a mortgagee bank, made the error, the collector should re-credit the payment to the correct account only if the municipality's collection rights have not been impaired. For example, if a taxpayer or mortgagee erroneously directs payment on the wrong parcel of real estate, and a municipal lien certificate is issued and recorded showing that taxes are paid on that parcel, the collector should not ordinarily credit the payment to the parcel for which the taxpayer or mortgagee intended to pay the taxes, since the municipality would have lost the lien to enforce that amount of tax against the parcel to which the payment was wrongly credited.

(updated 9/15/07)

Overpayments

Q49. Should a collector pay interest on refunds of taxes where the amount of tax originally assessed has been overpaid?

A49. No. Sometimes both an assessed owner and a mortgagee will pay a tax, or two co-owners, such as spouses, will pay the same bill. If the total payments exceed the committed tax, the collector must refund the excess, since the municipality has no right to retain the money in excess of the amount committed by the assessors. In cases where the assessors abate a tax to an amount below the total that has been collected, the excess must be refunded with interest pursuant to Ch. 59, § 69. But where an overpayment results from erroneous payments by the taxpayer or others, rather than from an abatement, there is no such statute providing for interest on refunds.

(updated 9/15/07)

Q50. Where more than one party has made payments on an account that is overpaid, who should get the refund?

A50. Any refund for a tax that has been abated should be made to the successful applicant for abatement. A check for a refund of an overpaid tax that has NOT been abated should be issued in the names all the parties who made payments with respect to a particular tax that has been overpaid, unless all the parties agree on who should get the refund.

(updated 9/15/07)

Collection by Set-Off

Q51. When can a town set off amounts it owes to taxpayers against unpaid taxes?

A51. Ch. 60, § 93 provides:

> "The treasurer...of any town may, and if so requested by the collector shall, withhold payment of **any money payable to any person** from whom there are then due taxes, assessments, rates or other charges **committed to such collector**, which are wholly or partly unpaid, whether or not secured by a tax title held by the town, to an amount not exceeding the total of the unpaid taxes, assessments, rates and other charges, with interest and costs. The sum withheld shall be paid or credited to the collector, who shall, if required, give a written receipt therefor...."

There must be an identity between the person or entity to which the municipality owes money and the person or entity assessed for the committed tax or other charges. For example, a personal liability of a corporation's officers or stockholders could not be offset against a refund or other money owed to the corporation, since a corporation is a legal person distinct from its officers or shareholders. But if the corporation itself is delinquent in the payment of taxes which were assessed in its name, § 93 may be used to set off any refund owed the corporation against its outstanding tax liability to the town.

The statute of limitations applicable to suits by a collector to enforce tax liabilities does **not** apply to collection by set-off. Decota v. Stoughton, 23 Mass App Ct 618 (1987).

Ch. 60, § 93 also appears to authorize a collector to direct that overdue taxes and excises be withheld from the wages of a delinquent municipal employee. However, any set-off against the wages of an employee must be done consistently with all provisions of state and federal law relating to the garnishment of wages.

(updated 9/15/07)

Bankruptcy

Q52. What effect does the filing of a bankruptcy petition have on the collection of taxes, excises and other charges?

A52. The filing of a petition in bankruptcy acts as an automatic stay or injunction against attempts to collect taxes or any other amounts that are owed by the bankrupt or that are a lien on his property. The collector cannot bring suit against the bankrupt to collect any amounts due, the town cannot deny, suspend or revoke licenses or permits for any unpaid charges, and a deputy collector cannot mark licenses or registrations for non-renewal on account of unpaid motor vehicle excises. Renewals of licenses and permits at the registry of motor vehicles cannot be denied while the bankruptcy case is pending even if the licenses and registration had been marked for non-renewal before the filing of the bankruptcy petition.

The stay does not prevent steps to perfect existing liens against property of the petitioner in bankruptcy that the trustee in bankruptcy could not avoid or invalidate. (The trustee can avoid any liens that would not be enforceable against an arms-length purchaser on the date of filing of the bankruptcy petition.) A collector can therefore certify taxes to an existing tax title account after the filing of the petition, but a treasurer cannot bring an action to foreclose the tax title.

The automatic stay prevents liens from arising for various charges that could otherwise be added to and collected as part of the tax, such as water or sewer bills and other user charges. Unpaid water and sewer bills, for example, become liens when overdue, so if the bankruptcy petition is filed before they become overdue, no liens will arise, and the charges should not be added to a property tax bill. The stay does not prevent liens arising for property taxes, betterments and special assessments after the filing of the petition.

(updated 9/15/07)

Q53. When does a discharge in bankruptcy make taxes and charges uncollectible?

A53. A municipality (or other creditor) cannot enforce personal liability for any tax or other amount that has been discharged. Generally, motor vehicle excises less than three years old when the bankruptcy petition was filed will not be discharged, nor will personal property taxes less than one year old. Real estate taxes and most other amounts owed to municipalities will be discharged. The assessors can abate personal property taxes and excises that are wiped out by a discharge in bankruptcy if the collector certifies on oath that they are uncollectible because of the bankruptcy. See Ch. 59, § 71 & Ch. 60A, § 7.

However, tax titles and other liens will ordinarily still be enforceable against the real estate after the bankruptcy discharge. In relatively rare cases, a bankruptcy trustee may sell property of the bankrupt free and clear of liens, in which case liens attach to the proceeds of sale.

(updated 9/15/07)

Motor Vehicle and Boat Excises

Q54. Where should the motor vehicle excise be assessed and collected?

A54. The excise on a motor vehicle must be assessed and collected in the municipality where the vehicle is principally garaged. The law indicates that the bills should be sent to the residences or principal business addresses of the owners. See Ch. 60A, § 2.

(updated 9/15/07)

Q55. Where should the boat excise be assessed and collected?

A55. The excise on a boat or ship must be assessed and collected in the municipality where the vessel is habitually moored or docked or, in the case of a vessel which has no mooring or docking space, where the vessel is principally situated. The law indicates that the bills should be sent to the residences or principal business addresses of the vessels' owners. See Ch. 60B, § 2.

(updated 9/15/07)

Q56. Is there a statute of limitations for excise bills?

A56. No statute sets a time limit on the validity of the motor vehicle or boat excise. However, certain of the collection remedies available to enforce the excise have limitations. For example, a suit in contract under Ch. 60, § 35 (made applicable to motor vehicle excises by Ch. 60A, § 3) must be commenced within six years and notices of non-renewal of the taxpayer's license and registration must be submitted to the registry within two years under Ch. 60A, § 2A (according to Registry rules) in order to be effective. Collection by set-off under G.L. Ch. 60, § 93 has no time limitation. However, any set-off against the wages of an employee must be exercised in harmony with all other provisions of law, both state and federal, which relate to the garnishment of wages.

(updated 9/15/07)

Q57. Is the collector required to issue a warrant to collect a delinquent motor vehicle excise prior to utilizing the non-renewal procedure set out in Ch. 60A, § 2A?

A57. Yes. See Susan J. Wright v. Collector and Treasurer of Arlington, 422 Mass. 455, 458

(1996)("The statute in plain language requires the issuance and service of a warrant").

(updated 9/15/07)